

Original

## PROSKAUER ROSE GOETZ &amp; MENDELSON

2121 AVENUE OF THE STARS  
LOS ANGELES, CALIF. 90067

2001 L STREET, N. W.  
WASHINGTON, D. C. 20036

ONE BOCA PLACE, SUITE 340 WEST  
2255 GLADES ROAD  
BOCA RATON, FLORIDA 33431

555 CALIFORNIA STREET  
SAN FRANCISCO, CALIF. 94104

1373 BROAD STREET  
POST OFFICE BOX 4444  
CLIFTON, N.J. 07015-4444

1585 BROADWAY

NEW YORK, N.Y. 10036

(212) 969-3000

FAX: (212) 969-2900

BRADLEY I. RUSKIN

MEMBER OF THE FIRM  
(212) 969-3465

EUROPEAN COUNSEL:

DUBARRY LEVEQUE  
LE DOUARIN & VEIL

PARIS

9, RUE LE TASSE  
75116 PARIS, FRANCE

BRUSSELS

55, AVENUE DE TERVUEREN  
B-1040 BRUSSELS, BELGIUM

March 29, 1993

BY HAND

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Attn: Ms. Donna R. Searcy

Re: In the Matter of Implementation of Section  
26 of the Cable Television Consumer  
Protection and Competition Act of 1992 --  
Inquiry into Sports Programming Migration  
(PP Docket No. 93-21)

Dear Ms. Searcy:

Enclosed are an original and nine copies of the  
Response of the National Basketball Association to the  
Federal Communications Commission's Notice of Inquiry in the  
above-captioned matter, with exhibits.

Very truly yours,



Bradley I. Ruskin

BIR:cb  
Enclosure

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PP Docket No. 93-21

**RESPONSE OF THE NATIONAL BASKETBALL ASSOCIATION TO THE  
FEDERAL COMMUNICATIONS COMMISSION'S NOTICE OF INQUIRY**

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In response to the Notice of Inquiry (the "Notice") issued by the Federal Communications Commission (the "Commission") in the above captioned matter, released on February 9, 1993, the National Basketball Association (the "NBA" or "League") responds with the following comments:

OPENING STATEMENT

An essential goal of NBA television policy over the last decade has been to increase the number of NBA games distributed through a variety of means, including national network broadcasts, national network cablecasts, local and regional over-the-air broadcasts, and local and regional cablecasts. In the current 1992-93 regular season alone. 1.030

television has been supplemented, not supplanted, by an increase in telecasts on non-broadcast media, fueled in large part by the development of cable regional sports networks.

The NBA's commitment to broadcast television and to providing games to its fans is demonstrated by the distribution

all forms of television programming in a highly competitive, fragmented and rapidly evolving television marketplace.<sup>1</sup>

In attempting to attract television audiences, the NBA, which is composed of twenty-seven teams located throughout the continental United States, competes with a wide range of sports and other forms of entertainment programming in local, regional and national markets. From the perspective of programmers such as the NBA, there is intense competition on all levels, including for the sale of programming, for advertiser interest in the programming and for viewers. Market forces have led to the distribution of all types of television programming through a significantly increased number of sources, as the growth of non-broadcast television has fundamentally changed television.

Inquiry into the NBA's television policy and distribution patterns can also only be fully understood in its historical context. In the late 1970s and early 1980s, NBA games frequently were played to half-empty arenas, several teams were on the verge of financial collapse, and there was little interest in NBA basketball as a television attraction. In fact, interest was so low in the NBA as a television product that the League's national broadcast carrier in 1982, then CBS, was interested in

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<sup>1</sup> On the dramatic trends in the television marketplace, see generally, Florence Setzer and Jonathan Levy, Broadcast Television in a Multichannel Marketplace, Working Paper 26, Office of Plans and Policy, Federal Communications Commission (June 1991).

telecasting only five regular season games,<sup>2</sup> and it aired the final game of both the 1980 and 1981 Championship Series -- the season's single most important contest -- on tape delay, rather than as a live broadcast.

Through careful implementation of its television policy over the last decade and by taking numerous other steps to promote and enhance interest in NBA basketball, the NBA has increased availability of NBA games on broadcast television, while simultaneously delivering many additional games via cable and new technologies -- all games that were not previously available on any form of television. While increasing the non-broadcast distribution of NBA games, the NBA has at the same time sought to ensure that the number of games available on broadcast television has also increased on both the national and local level.

\* \* \* \* \*

Set forth below are the NBA's responses to specific requests for comment contained in the Notice.<sup>3</sup>

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<sup>2</sup> CBS ultimately telecast seven games during the regular season because of a work stoppage in the NFL, which gave CBS unexpected available air time to fill.

<sup>3</sup> The NBA is not responding to every request for comment because, among other reasons, many of the requests do not relate to the NBA or seek information directly from it. For those requests to which the NBA is responding, it has identified the paragraph number and the specific request within that paragraph to which its response is addressed.

### Comments in Response to Paragraph 2

The Commission draws a distinction between broadcast television and subscription medium and defines the latter as "one for which viewers pay a fee." The NBA believes that although viewers pay a fee for basic cable television service, basic cable in the current television marketplace is different in various respects from services in which a separate fee is paid by consumers for specific channels or programming. Thus, the NBA believes that only pay and pay-per-view cable television should be termed "subscription" television. To the extent that the Commission has grouped basic, pay and pay-per-view cable television together and contrasted these media with broadcast television, the NBA believes that the proper terminology (and the terminology it will use in its responses) should be broadcast and non-broadcast television.

### Comments in Response to Paragraph 6:

The NBA believes that the review of distribution patterns over the last decade appears to be a reasonable time period for the Commission's inquiry.

### Comments in Response to Paragraph 7:

With respect to the growth of national cable networks and superstations offering sports programming, at various times during the period in question, the NBA has had national cable contracts with TBS, TNT, ESPN and USA. Telecasts of NBA



basketball on these cable outlets have contributed significantly to the growth and popularity of these networks.

With respect to the proper classification of superstations, a superstation is a national cable network. For purposes of this inquiry, the NBA believes that within a

**Comments in Response to Paragraph 9:**

With respect to the Commission's request for information as to the objective of a league's television policy, the NBA has sought, through its television policies and practices, and otherwise, to enhance the value, and attractiveness and competitiveness of NBA basketball throughout the United States as an entertainment and television product and to increase the number of NBA games telecast and the number of viewers reached over the long term.

**Comments in Response to Paragraph 10:**

With respect to the Commission's request in footnote 19 for examples of "reverse migration and how to evaluate them," the NBA notes that there has been a trend among teams to increase the number of home games available locally over-the-air. (See Exhibit 6 (e.g., Detroit Pistons; Los Angeles Clippers).)

In addition, the NBA notes that since 1982-83, the ratio of NBA regular season games appearing on national broadcast network television compared with national cable television has increased. (See Exhibit 1.)

**Comments in Response to Paragraph 11:**

During the period in question, the NBA regular season has consisted of 82 games, with each team playing 41 home games and 41 away games.

From the 1980-81 through 1987-88 seasons, there were 23 NBA teams; during the 1988-89 season there were 25 teams; and, beginning with the 1989-90 season, there have been 27 teams. Throughout the period in question, the teams have been divided into two conferences -- the Eastern Conference and the Western Conference. The Eastern Conference consists of the Atlantic and Central Divisions; the Western Conference consists of the Midwest and Pacific Divisions.

From 1979-80 through 1982-83, the structure of the NBA Playoffs was as follows:

**First Round:** The first round featured eight teams, the four teams from each Conference with the best records, excluding the division champions,<sup>4</sup> in four "best-of-three" series.<sup>5</sup>

**Conference Semifinals:** The Conference semifinals featured eight teams -- the four first-round winners and the four regular season division champions (who did not play in the first round) in four best-of-seven series.

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<sup>4</sup> Throughout the period in question, during the first three rounds of the Playoffs, teams only play other teams in their Conference. The NBA Finals features one team from each Conference.

<sup>5</sup> In a best-of-three series, the first team to win two games wins the series; in a best-of-five series, it is the first team to win three games; and in a best-of-seven series, it is the first team to win four games. In any particular series, the number of games actually played may vary; for example, a best-of-seven series can last anywhere from four games (if the winning team wins the series 4-0) to seven games (if the winning team wins the series 4-3). Thus, the total number of playoff games actually played will likely vary from year to year.

Conference Finals: The Conference finals featured the four semifinal winners (two from each Conference) in two best-of-seven series.

NBA Finals: The NBA Finals featured the two Conference champions in a best-of-seven series.

The number of Playoff games played during the years in which this playoff format was followed was as follows:

<u>Season</u>	<u>Number of Playoff games</u>
1979-80	48
1980-81	53
1981-82	47
1982-83	43

Since the 1983-84 season, the playoff format has been as follows:

First Round: The first round features sixteen teams.

**NBA Finals:** The NBA Finals features the two conference champions in a best-of-seven series.

Since the 1983-84 season, the number of Playoff games played has been as follows:

<u>Season</u>	<u>Number of Playoff Games</u>
1983-84	79
1984-85	68
1985-86	68
1986-87	71
1987-88	80
1988-89	62
1989-90	72
1990-91	68
1991-92	73

The information requested in paragraph 11 concerning annual league wide regular season and playoff telecasts is attached hereto as Exhibits 1-4 and Exhibit 6. Exhibits 1-4 contain summaries of this information; Exhibit 6 contains the annual team-by-team regular season and playoff television information.<sup>6</sup>

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<sup>6</sup> The team-by-team information was compiled from documents known as "Master Television Schedules," which contain a chronological list of every NBA game played during a particular season, and identify the manner in which each game was televised. Because the Master Television Schedules may not reflect every telecast change that occurred during the course of a given year, the Master Television Schedules may not be precisely accurate. From time to time, the League also compiled annual League-wide summaries of the games that have been telecast, which form the basis for the league-wide summary data set forth in the Exhibits 1-4.

With respect to the request (in footnote 20) for information on games not exhibited at all, such data is difficult to ascertain. However, generally speaking, there are a large number of reasons why certain games may not be exhibited at all. Fundamentally, the ability to license games is a function of available space on a telecaster's schedule and an estimate by the telecaster of the viewing and sales potential of any particular games. Thus, for example, in some instances, (i) telecasters may not be interested in televising additional games, (ii) the rights holder to a team's games may only be willing to carry a certain number of games, but, as part of the negotiations, demands the exclusive rights to televise that team's games in one or more media; (iii) the rights holder may be contractually obliged to carry other sporting events (e.g., baseball or hockey) or other programming at times when NBA games are scheduled; (iv) local stations may not be interested in carrying games that may also be carried in their market on a superstation; or (v) broadcast network affiliates may have obligations to carry network programming during prime time and may not be able to carry all games.

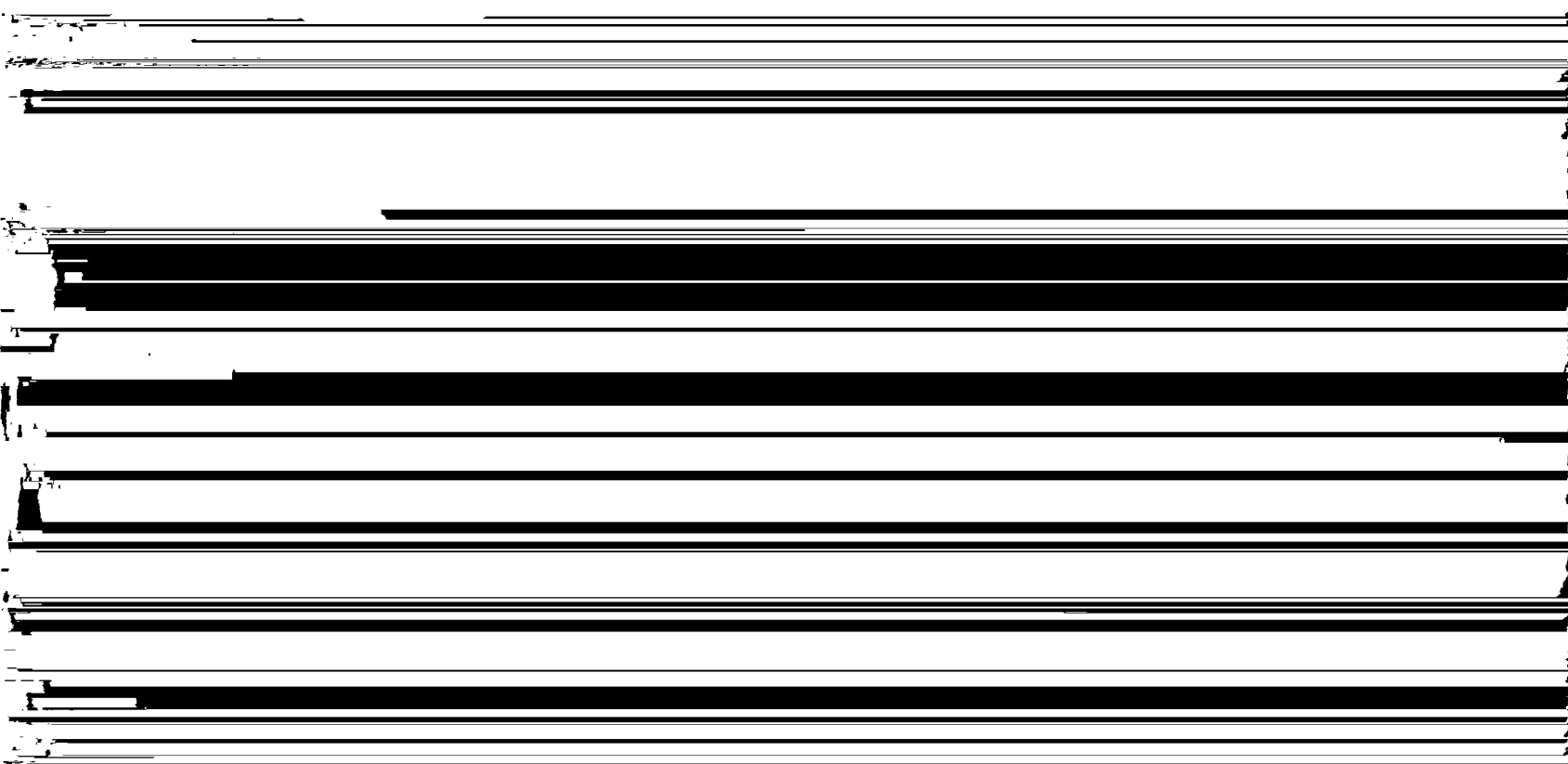
**Comments in Response to Paragraph 12:**

The average annual ratings for NBA telecasts during the period in question is set forth for the years in which the NBA has reliable data on Exhibits 3-5 hereto.

Accompanying the NBA's submission is a September 1992 report created by Bortz & Company, Inc., entitled "Superstation Carriage of NBA Telecasts: An Investigation of Impacts On NBA National and Local Telecasts" (hereinafter the "Bortz Report"). With respect to the shifts in the demand for sports programming and the impact of non-broadcast media on broadcast sports programming, the Commission is respectfully directed to Section IV of the Bortz Report, a copy of which is Exhibit 7.

Comments in Response to Paragraph 13:

With respect to the Commission's request for information concerning contract terms, the NBA's current national broadcast contract with NBC and its national cable contract with TNT both commenced with the 1990-91 season and expire at the conclusion of the 1993-94 season. It has been reported publicly that NBC agreed to pay \$601 million to the NBA for the rights it



to authorize its teams to televise local broadcasts outside local markets.

TNT is authorized to telecast at least 50 pre-season and regular season games each season, certain special events related to the NBA All-Star Game, and up to 30 playoff games during the first three rounds of the NBA playoffs. With respect to exclusivity, no telecasts may be licensed to any other national cable network and no superstition game may be telecast on national cable on the same night that TNT telecasts an NBA game. However, all games televised by TNT are also available for over-the-air broadcast or cablecast in the local markets of the competing teams, and all TNT cablecasts are blacked out on cable systems within a 35 mile radius of the city of operation of the home team participating in the telecast.

With respect to the Commission's request for financial information concerning the individual teams' television contracts, such information is maintained confidentially.

With respect to non-confidential information, teams are expected during the current 1992-93 regular season to broadcast anywhere from 1 (New York Knicks) to 41 (Houston Rockets and Golden State Warriors) games on local/regional over-the-air television, and anywhere from 0 (Milwaukee Bucks) to 74 (Knicks) games on local/regional cable television. With respect to exclusivity, as a general rule, telecasters who obtain the rights



to televise an individual team's games invariably seek to obtain the maximum degree of exclusivity possible.

The virtual absence of local over-the-air carriage of New York Knicks's games is an example of how the realities of the marketplace affect the availability of NBA basketball on local

is located within another team's territory. With respect to the local and regional sale of cable rights, each NBA team is permitted by the League, subject to existing and future League rules and agreements, to authorize the telecast of its games via basic or pay cable or satellite within 75 miles of such team's city of operation. Beyond 75 miles, regional cable or satellite distribution is permitted, so long as the telecaster enters into an agreement with the League.

With respect to superstation carriage of NBA basketball, during the 1992-93 regular season, WTBS will carry 30 Atlanta Hawks games, WGN will carry 30 Chicago Bulls games and WWOR will carry 10 New Jersey Nets games. In addition, consistent with FCC rules, the distant signal importation of NBA games may be blacked out under certain circumstances on cable systems within a 35 mile radius of the home team's city of operation if such team is not broadcasting the game locally on over-the-air television.

**Comments in Response to Paragraph 14:**

The NBA's national broadcast contract with NBC and its national cable contract with TNT both expire at the conclusion of the 1993-94 season. Additional information concerning the remaining years of those agreements is set forth in the responses to paragraphs 11 and 13, above.

**Comments in Response to Paragraph 17:**

With respect to the Commission's inquiry concerning the Philadelphia 76'ers cable television package, the NBA notes that no games are distributed on a pay-per-view basis. Rather, the 76'ers games are carried in Philadelphia by WPHL, a local over-the-air station, and by PRISM/SportsChannel, a regional sports network. During the current 1992-93 season, seven (7) 76'ers games are scheduled for telecast on WPHL, 13 games are scheduled for telecast on SportsChannel Philadelphia (basic cable), and 61 games are scheduled for telecast on PRISM (pay cable).

For information concerning the changes over time in the exhibition of NBA playoff games, see Exhibits 2 and 6, submitted in response to ¶ 11.

**Comments in Response to Paragraph 23:**

With respect to the impact of the fragmentation of the viewing audience on the expected audience for sports programming, the Commission is respectfully directed to Section IV of the Bortz Report, a copy of which is Exhibit 7.

**Comments in Response to Paragraph 24:**

With respect to the issue of retransmission consent fees, the Commission is respectfully directed to the comments the NBA submitted jointly with the National Hockey League in response to the Commission's notice of Proposed Rule Making, Mass Media Docket No. 92-259, dealing with certain broadcast signal carriage

issues affected by the Cable Television Consumer Protection and Competition Act of 1992. A copy of these comments is Exhibit 8.

Comments in Response to Paragraph 25:

The NBA believes that broadcast media exposure is a very important factor in promoting interest in the League and its member teams. The Commission is also respectfully directed to the May 9, 1990 Statement of the NBA Commissioner, David J. Stern, before the Subcommittee on Telecommunications and Finance of the Committee of Energy and Commerce of the United States House of Representatives, in which he stated, among other things:

I am confident that for some time to come, free television will remain the key method of distribution to our fans. On both the national and local level, we recognize the promotional value of having our games available to all television households. And we also believe that this ability to reach all television households, particularly with our key events such as the All-Star Game and the NBA Finals, is absolutely vital to the success of our other marketing ventures in publishing, home video, licensing and corporate sponsorship. Accordingly, for the foreseeable future I do not anticipate any dramatic change in the number of NBA games available on, or shifting of our key events away from, free over-the-air television.

A copy of the Statement is Exhibit 9.

The NBA believes that a team's on the court success is one of a number of factors that has a significant affect on a team's gate receipts and attendance. With respect to the breakdown of profit sources, on a league wide average in 1991-92 regular season, total broadcasting income (including national

broadcast and cable, local and regional broadcast and cable, local radio, and other broadcast income) accounted for 43.2% of revenues; gate receipts accounted for 41.9% of revenues; and other sources of income accounted for the remaining 14.9% of revenues. The percentage of revenue accounted for by broadcast income has increased from 31.3% in 1981-82 to 43.2% for 1991-92.

**Comments in Response to Paragraph 26:**

With respect to the role of superstations and their impact on national exhibition of NBA games and the availability of games both within and outside of their local markets, the Commission is respectfully directed to the Bortz Report, a copy of which is Exhibit 7.

**Comments in Response to Paragraph 27**

With respect to the Commission's desire to analyze "[t]he effect of the current professional sports antitrust exemption on the distribution of professional sports carriage rights," the NBA believes that the Sports Broadcasting Act has promoted the national carriage of NBA basketball, and in turn, promoted consumer welfare by increasing availability of NBA basketball throughout the United States.

While the NBA believes that its national telecast

television packages by providing the leagues, their telecast partners, and their sponsors with an increased degree of certainty that the contracts that they have entered into for the distribution of their games are lawful.

The Sports Broadcasting Act also permits the NBA to grant exclusive rights to telecasters, which are of increasing importance for the League in order for it to provide attractive packages for the national televising of its games. The revenues generated by television contracts entered into by the League are shared equally by all member teams of the NBA and have been essential to its success. For example, consistent with an express purpose of the Sports Broadcasting Act, shared television revenues are vital for the ability of lower grossing teams to remain competitive and to meet their minimum player payroll obligations imposed by the League's collective bargaining agreement, thus making NBA basketball available to more fans, including those in smaller markets. By way of example, during the 1990-91 season, shared revenues accounted on average for 32.5% of each team's total revenues. Moreover, during the 1990-91 season, 20 of the 27 teams would have had net operating losses without shared revenues.

Furthermore, shared revenues generated through television contracts have been an important factor in enabling the League to be a more effective competitor in the television marketplace and to increase the number of clubs through expansion, which in turn has created more NBA games and more NBA telecasts.

#### Comments in Response to Paragraph 28

The NBA believes that the development of new technologies, such as DBS, present a further significant opportunity to supplement the number of games available on broadcast television and increase consumer choice. However, in the context of exploring the possibility of distributing NBA games via DBS, the NBA currently has no intention of moving games from broadcast to DBS. Thus, in a March 12, 1992 letter to Representative Markey, Commissioner Stern wrote:

For the foreseeable future, NBA games that traditionally have been carried over broadcast or cable television will continue to be delivered in the same way. Any use of the DBS technology will only add to -- not take away from -- the number of NBA games available on the "traditional" methods of distribution, on both the national and local level.

A copy of this letter is attached as Exhibit 10 (emphasis in original).

#### Comments in Response to Paragraph 30

The NBA believes that the data it has submitted in response to this Notice makes clear that non-broadcast media have made available the telecast of NBA games that would not otherwise have been televised at all, and have not reduced the number of games available via broadcast television. Indeed, during the time period in question, the total number of games available on broadcast television, both nationally and locally, has increased. (See Exhibit 1.) In addition, with respect to the centerpiece of

the NBA season -- the NBA Finals, the NBA has maintained its commitment to making every game of the NBA Finals available to the largest possible number of people by keeping these games on national broadcast television.

#### CONCLUSION

The NBA's television policy over the last decade has resulted in the significant increase of telecasts of NBA games in both broadcast and non-broadcast media. The existence and growth of non-broadcast television has permitted the NBA to supplement the distribution of its games and increase their availability to its fans. In sum, the NBA believes that the public is better served by the current mix of broadcast and non-broadcast exhibition of NBA basketball than it was in 1980.

Respectfully yours,

NATIONAL BASKETBALL ASSOCIATION

By: Jeffrey A. Mishkin  
Jeffrey A. Mishkin  
Senior Vice-President, Legal  
and Business Affairs  
645 Fifth Avenue  
New York, New York 10022

By: Bradley I. Ruskin  
Bradley I. Ruskin  
PROSKAUER ROSE GOETZ & MENDELSON  
Attorneys for National Basketball  
Association  
1585 Broadway  
New York, New York 10036  
(212) 969-3000

Of Counsel:

Philip R. Hochberg  
BARAFF, KOERNER, OLEANDER  
& HOCHBERG, P.C.  
5335 Wisconsin Avenue, N.W.  
Suite 300  
Washington, D.C. 20015-2003  
(202) 686-3200



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Exhibit 1

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 93-77

In the Matter of

Implementation of Section 26 of the  
Cable Television Consumer Protection  
and Competition Act of 1992

Inquiry into Sports Programming  
Migration

PP Docket No. 93-21

EXHIBITS TO THE RESPONSE OF THE

WIRELESS TELECOMMUNICATIONS ASSOCIATION TO THE